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APPEARANCES:

On behalf of the Plaintiffs:

MONTGOMERY & LARYMOYEUX

1016 Clearwater Place

West Palm Beach, Florida 33401

BY: ROBERT M. MONTGOMERY, ESQUIRE

On behalf of the Defendant Lorillard:

REID, METZGER & ASSOCIATES, P.A.

250 Australian Avenue South

Suite 700

West Palm Beach, Florida 33401

BY: JUSTUS W. REID, ESQUIRE

ALSO PRESENT: Rachel Payne

Jodi Fiedler

- - - - -

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I N D E X

WITNESS: DIRECT CROSS REDIRECT RECROSS

Honorable Marvin U. Mounts, Jr.

BY MR. REID: 4 36

BY MR. MONTGOMERY: 24 --

E X H I B I T S

Defendant Lorillard

No. 1 Page 7

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Thereupon,

Honorable Marvin U. Mounts, Jr.,
being by the undersigned Notary Public first duly
sworn, was examined and testified as follows:

THE WITNESS: I do.

DIRECT (Honorable Marvin U. Mounts, Jr.)

BY MR. REID:

Q. Would you be kind enough to give me
your full name and tell us your profession, please.

A. Marvin U. Mounts, Jr., and I'm an
attorney.

Q. Are you also a judge?

A. Yes.

Q. And where are you doing your judging
these days?

A. In Palm Beach County, the Fifteenth
Judicial Circuit.

Q. To what division are you assigned?

A. Criminal.

Q. Would you be kind enough to tell us
sort of when you got involved with state government
and how it evolved up to the present time?

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1 A. Well, from law school, I graduated in
2 1959 and entered the office of County Solicitor in
3 Palm Beach County which was --

4 Q. Which is the State Attorney now?

5 A. Well, we had a State Attorney who was
6 Phil O'Connell. The County Solicitor prosecuted
7 everything from misdemeanor to second degree murder,
8 and the State Attorney handled first degree murder
9 and rape, which was a capital crime at the time.
10 And I worked for the County Solicitor who was Joel
11 Daves.

12 Q. How many years did you do that, Judge?

13 A. Well, I ran for his job in '64 and '68
14 and then ran for circuit court in '72.

15 Q. And did you win in '72?

16 A. Yes.

17 Q. So you've been a circuit court judge
18 since 1972?

19 A. Yes.

20 Q. My recollection, which is probably not
21 crystal clear, is that you have performed
22 essentially in either the juvenile division or in
23 the criminal division for most of the period of time
24 from '72 to today's date?

25 A. That's correct.

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1 Q. When were you in the juvenile court;
2 that is, in the circuit court, but assigned to the
3 juvenile division?

4 A. Justice Adkins was the chief judge and
5 instituted mandatory rotation, and I replaced Judge
6 John Beranek in juvenile to work with Judge Newell.
7 There were two juvenile judges. That would have
8 been in the '70s, but I don't recall precisely when.

9 Q. And at some point in your career as a
10 juvenile judge did you visit the juvenile
11 facilities, the correctional facilities?

12 A. I did. I went to what was called --
13 actually I went to all of them. I went to the one
14 in Okeechobee, School For Boys we called it. It's
15 now Eckerd Youth Camp. There was a similar school
16 for young women in Ocala. I've forgotten that name.

17 Q. It wasn't Lowell, was it?

18 A. No. Lowell is the women's institution
19 for adults. There was a separate one for juvenile
20 girls, and then the one for the young men out in the
21 Panhandle, Marianna, I think it was.

22 Q. So you would have visited three
23 separate juvenile facilities, for both males and
24 females?

25 A. Correct.

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1 Q. When you visited these, what was the
2 purpose for your visit?

3 A. I knew that I would be placing children
4 in those types of institutions, and I thought it was
5 important for me to understand what the institution
6 was like, its feeling, its culture, its treatment,
7 its handling, its discipline, the total environment
8 of the type of place where I would send people.

9 Q. What sort of a population would these
10 institutions have had around the time you were
11 there? You may not know exactly, but generally
12 speaking.

13 A. The girls' institution was small, maybe
14 100; the boys, 300 to 500. But that's a very raw,
15 rough estimate.

16 Q. When you went there, did you notice
17 whether or not smoking was permitted or taking
18 place?

19 A. Yes, I did notice.

20 Q. What did you notice?

21 A. That it was allowed and permitted.

22 Q. Did you come to any conclusions about
23 whether it was just a few people smoking, a lot of
24 the kids smoking, or what?

25 A. It seemed to be widespread, in my

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1 opinion.

2 Q. What age groups would have been
3 incarcerated in these youth or juvenile
4 institutions?

5 A. There may have been an occasional 12-
6 or 11-year-old, but there were mostly 15 through 17.

7 Q. Now, did you inquire to any of the
8 officials employed within the institutions about why
9 the children were permitted to smoke?

10 A. Well, that's a matter of some, perhaps,
11 delicacy. I'm in the position of a judge and people
12 are deferential to judges, for the most part.

13 Q. We are, I can tell you that.

14 A. And I was personally offended. I
15 thought, even though I was a smoker myself, that it
16 was wrong to allow young people to smoke. It was
17 sort of like the State was almost encouraging it.

18 I felt uncomfortable about that, but I
19 didn't want to be impolite in approaching the
20 people. So I tried in what I thought was a
21 courteous and delicate fashion to ask about it and
22 to express with some caution my reservations about
23 the State being involved in allowing that.

24 Q. To whom did you express your
25 reservations, if you recall?

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1 A. I think the Superintendent was himself
2 taking me around. They're not visited that much, he
3 told me, so it was, I guess, a unique experience.

4 Q. Now, after that period of time in the
5 year -- and I'm not sure that we isolated the year,
6 but what would you estimate would have been the year
7 that you became involved in this procedure if you
8 became a circuit judge in 1972?

9 A. Began serving in '73. I was elected in
10 '72, sworn in by the Chief Justice of the Supreme
11 Court. He came down and did that.

12 Q. Were you initially associated with the
13 juvenile court first?

14 A. No. Criminal first for a few years.
15 And then Adkins' requirement of rotation came in and
16 so I would imagine mid '70s.

17 Q. Somewhere mid '70s is what we're
18 talking about when you toured these youth facilities
19 and had that conversation that you told me about?

20 A. Right.

21 Q. Now, after touring on that one or more
22 occasion, that is, when you toured I think three
23 facilities, did you ever re-tour those or tour any
24 other youth facilities?

25 A. I did not go back to those after the

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1 two-year stint in juvenile. I did go to some other
2 juvenile programs, but they were like halfway
3 houses. We had one called Palm Beach House here on
4 Butler Street, I believe it was. And they lived in
5 a home-like environment. And Skip Smith's mother
6 was involved in a house for girls, and I went to
7 places like that. But my formal touring of State
8 prisons began when I rotated back into the criminal
9 division after those two years and I began with a
10 small group and have been doing it ever since.

11 Q. Touring the prison system?

12 A. Yes.

13 Q. And have you ever been back to any of
14 the juvenile prisons once you were out of juvenile?

15 A. No. They phased out -- the legislative
16 policy changed and they closed the girls' school in
17 Ocala and they closed the boys' school out in
18 Marianna. They almost closed down Okeechobee School
19 For Boys, then Eckerd took it over as a youth camp.
20 But I've not been back to any of them.

21 Q. What did they do to place these
22 juveniles if they phased out these various detention
23 centers?

24 A. By this time I was out of juvenile.

25 Q. Yes, sir.

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1 A. So my recollection is not that precise,
2 unfortunately, but I believe, to the best of my
3 knowledge and belief, that they tried to create
4 other programs that were more residential-centered
5 and less institutional. And the idea -- you know, I
6 cannot explain why the legislature does things; it
7 is their own reasoning and I'm just speculating on
8 that.

9 Q. You expressed to us earlier, a few
10 minutes ago, that you were personally offended and
11 felt that it was wrong to allow young people to
12 smoke and for the State to allow this to occur.
13 Would you tell me why that was, why did you have
14 that feeling?

15 A. Well, I did not believe that smoking
16 was a desirable or healthy habit -- although I
17 myself was a smoker -- and that it was perhaps not
18 good to suggest to young people a bad health
19 practice or a poor health practice or a questionable
20 health practice.

21 Q. By the mid '70s you told us you were
22 still smoking, correct?

23 A. Heavily.

24 Q. By the mid '70s were you aware of some
25 of the risk factors involved or associated with the

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1 use of cigarettes?

2 A. Yes.

3 Q. What were some of those factors that
4 you knew of that would be classified as risk factors
5 for various disease?

6 A. Increased blood pressure, shortness of
7 breath, heart disease, heart stress, lung cancer,
8 other ailments of the breathing mechanism. I mean,
9 it doesn't just have to be cancer; it can be
10 emphysema. And I don't know that emphysema is
11 directly related to smoking. Coughing.

12 Q. Bronchitis type of things?

13 A. Yes. And since I've quit I have
14 noticed that I no longer have colds or bronchitis as
15 severely as I did all the years that I smoked.

16 Q. It is now 1997. As we sit here today,
17 you no longer smoke, correct?

18 A. That's correct.

19 Q. And you stopped, I think, approximately
20 six or seven years ago?

21 A. Thereabouts.

22 Q. When you went to visit these halfway
23 houses, did you also note that smoking was going on
24 in the age groups, the juveniles that were housed in
25 those areas?

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1 A. I do not recall.

2 Q. When you went to visit the prisons and
3 as you have continued to visit the prison systems
4 around the State of Florida, have you noticed
5 whether or not smoking is permitted in the prison
6 systems --

7 A. It always has been.

8 Q. -- and so the answer is yes, it is?

9 A. Yes.

10 Q. And always has been?

11 A. Yes.

12 Q. Are you familiar with the fact that the
13 State itself was in the business of the
14 manufacturing and distribution of its own brand of
15 cigarettes?

16 A. Yes.

17 Q. Do you recall the name or the brand of
18 that cigarette?

19 A. Those cigarettes, as well as other food
20 products, were called DC Brand.

21 Q. And "DC" presumably would be Department
22 of Corrections?

23 A. Yes.

24 Q. Were you familiar with the fact that
25 these cigarettes were distributed in the prison

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1 system?

2 A. Yes.

3 Q. How were you familiar with that?

4 A. Personally observed it.

5 Q. Did you ever learn anything about the
6 ingredients in those particular cigarettes?

7 A. I personally endeavored to smoke them
8 and found them very strong indeed, too strong for me
9 to enjoy.

10 Q. At some point the State -- and I'm
11 going to have you assume it was 1978 for the
12 purposes of this question -- decided to discontinue
13 the manufacture of DC Brand cigarettes.

14 MR. MONTGOMERY: Excuse me. What was
15 that date?

16 MR. REID: 1978.

17 BY MR. REID:

18 Q. Did you ever discuss with Louie
19 Wainwright, the head of the prison system, the fact
20 that there was going to be a discontinuance of the
21 manufacture of these cigarettes?

22 A. Yes, I did.

23 Q. And where did that discussion take
24 place, if you recall?

25 A. Well, the -- I was on a committee that
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1 was started by Governor Graham at the instance of a
2 socially active lawyer by the name of Toby Simon,
3 and in the course of those committee meetings the
4 secretary was involved.

5 Q. Louie Wainwright?

6 A. Yes. Mr. Wainwright was involved, so
7 we actually became friends and from time to time
8 would have lunch together, and so we talked about it
9 several times.

10 Q. What did Secretary Louie Wainwright
11 tell you was the impetus or the reason why these DC
12 cigarettes were no longer being manufactured by the
13 State?

14 A. Well, in referring to the minutes --

15 Q. Maybe we can identify what you are
16 looking at.

17 A. I will. The Governor's Executive
18 Review Committee for the Florida Department of
19 Corrections, Florida State Prison and Union
20 Correctional Institution, September 3 and 4, 1980.

21 MR. REID: We will mark that as
22 Defendant Lorillard's first exhibit.

23 (Thereupon, the document was marked
24 Defendant Lorillard's Exb. No. 1 for
25 Identification.)

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1 BY MR. REID:

2 Q. That consists of about 15 pages with
3 page 11 missing, I believe.

4 A. Two pages. I think 15 may -- 16 and
5 11, I think, are missing.

6 Q. Did I provide that to you?

7 A. Yes.

8 Q. Did it help refresh your recollection
9 as to what took place with regard to stopping the
10 manufacturing of cigarettes by the State of Florida?

11 A. To some extent. I had a slightly
12 different recollection which may or may not be
13 accurate.

14 Q. Okay. At any rate, did you attend a
15 meeting in 1980 when this subject was brought up?

16 A. Oh, yes. I mean, I remember we flew
17 from Tallahassee and landed at the prison landing
18 strip which is outside of the reception and medical
19 center. It's a little grass strip. The whole
20 committee, on three or four different State planes.

21 Q. And this would have been outside of
22 which correctional facility?

23 A. Well, we toured both Florida State and
24 Union. Union was the first original Florida State
25 prison facility which was called Raiford.

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1 Q. And so you toured --

2 A. -- both institutions, then had this
3 meeting.

4 Q. And at this meeting do you recall that
5 the discussion began with Mr. Simon asking why the
6 State no longer provided free cigarettes that they
7 made?

8 A. On page 4. Yes, I do.

9 MR. MONTGOMERY: Object to form.

10 THE WITNESS: Yes, I do.

11 BY MR. REID:

12 Q. Would you tell us what you recall.

13 A. My recollection is somewhat dependent
14 on personal recollection apart from this. And I
15 know that the committee was concerned and we did
16 discuss -- although it's not reflected in these
17 minutes -- whether it was a desirable or a wise
18 thing for the State to sanction tobacco smoking by
19 making it available for free to inmates. They could
20 buy their own, if they wanted to, in the canteen.

21 Q. Right.

22 A. And I had some discussions with
23 Secretary Wainwright apart from the committee, just
24 in the hallway or at lunch or, you know, as you do.
25 And my recollection is that he, personally,

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1 disfavored smoking as a matter of hygiene or health.
2 But he, as sort of the slave of the legislature,
3 he's an employee of the executive and must do the
4 bidding of the executive as well as the legislature,
5 and there were those in the legislature who regarded
6 it as a health hazard and wanted it discontinued.

7 And the tobacco lobbyists didn't want
8 anything that would -- I don't know. "Anything" is
9 such a raw term. But they didn't favor taking
10 action that would make tobacco smoking unfavorable
11 or put it in a bad light. Those are not very
12 articulate terms to describe what I'm trying to say.

13 And so the legislature ended up, it is
14 my recollection, by just telling the Secretary,
15 We're going to take away from your budget the
16 precise amount of money that you use to grow the
17 tobacco and process it and manufacture it. And then
18 you will decide what you want to do. And I think
19 Louie's belief, as I recall it, was that he thought
20 they ought not to be smoking anyway, and so he just
21 eliminated the program.

22 Q. "He" meaning Louie Wainwright?

23 A. Secretary Wainwright.

24 Q. Secretary Wainwright, who was in charge
25 of the prison system for the State of Florida?

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1 A. Correct.

2 Q. Did Mr. Wainwright express to the
3 committee his statement that he had received
4 information from some university group that felt
5 that cigarettes manufactured by the Department were
6 high in nicotine and tars?

7 A. Yes.

8 MR. MONTGOMERY: Object to the form.
9 Move to strike.

10 THE WITNESS: But I do recall that.

11 BY MR. REID:

12 Q. And do you recall whether he talked to
13 the committee that you were a member of about
14 measuring the differences between the DC cigarettes
15 and commercially available other cigarettes that had
16 filters on them?

17 MR. MONTGOMERY: Object to form.

18 BY MR. REID:

19 Q. You can answer.

20 A. I don't recall that although that may
21 have occurred.

22 Q. Do you recall anything else he said to
23 the committee with regard to the cessation or the
24 stopping of the manufacturing by the State?

25 A. Yes. We did discuss -- and

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specifically at his invitation -- the question of to what extent permitting smoking reduced prison unrest, stress, tension, the other concomitants of confinement.

Q. And did you express an opinion on that or was that just he expressing an opinion?

A. That was discussed in the committee meeting.

Q. Was the end result of what Secretary Wainwright was describing that occurred approximately two years before you had this meeting, that cigarettes were no longer manufactured and given out free by the State of Florida?

A. Yes.

Q. You talked to us about this committee. Did this committee phase out or stop meeting after this period of time, September of 1980?

A. No. It continued. It assumed a new name. It became the Governor's Committee on Corrections, and the membership changed somewhat too.

Q. It did?

A. Yes.

Q. How did it change, in what way?

A. Well, one I recall specifically is that
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1 David Bludworth, who was the State Attorney from
2 this circuit, was no longer on it. Toby Simon
3 became the principal head of the committee. And he
4 either had the title or he just took it over and did
5 it because he was very -- you know, he was very much
6 like Mr. Montgomery here, a person of some
7 authority.

8 Q. At the meetings -- and especially the
9 one that we discussed earlier, the September 3 and
10 4, 1980 meeting -- did the General Counsel with the
11 Governor's office attend that meeting?

12 A. Yes. There were several, because they
13 changed every six months, I think, was the rotation.

14 Q. And so that person would have been
15 representing the Governor's office?

16 A. Right. Bob Josephsberg, I recall
17 particularly, he attended more meetings than some of
18 the other attorneys for the Governor.

19 Q. Jim Smith, was he the Attorney General
20 at the time?

21 A. He was the Attorney General.

22 Q. And what about a Dr. Florian Yandel, do
23 you recall who that was?

24 A. I do not recall. It may have been a
25 person from the U.S. Department of Corrections. We

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1 had several of those people who participated.

2 Q. How much longer did the committee with
3 its new name continue? How many years or months
4 after September of 1980?

5 A. I do not recall specifically. My
6 recollection is several years. Toby Simon became
7 ill with cancer himself and died, and the committee
8 sort of died when Toby became ill.

9 Q. You would guess that you had
10 approximately how many more meetings?

11 A. It seemed to me that the committee
12 lasted for another two years at least.

13 Q. Was smoking and health ever the subject
14 matter of any other meetings, to your knowledge?

15 A. Oh, yes.

16 Q. It was?

17 A. Not so much smoking but diet, whether
18 the inmates received fresh fruit. We talked about
19 that a lot. Toby was with his lawsuit, Costello
20 versus State (sic) at that time.

21 Q. And that lawsuit was pending for a
22 number of years?

23 A. Uh-huh.

24 Q. Sir?

25 A. Yes.

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1 Q. Do you ever recall in this period of
2 time or subsequent thereto, seeing advertisements in
3 magazines and whatnot involving smoking?

4 A. Of course.

5 Q. Did these advertisements cause you to
6 change brands of cigarettes?

7 A. I think so.

8 Q. What did they cause you to do?

9 A. I went to lower tar, lower nicotine
10 advertised cigarettes, the lights and --

11 Q. You told us that you stopped smoking?

12 A. Yes.

13 Q. And you stopped smoking about six or
14 seven years ago, I think you said. Was that a
15 decision that was made after an illness or a bout
16 with pneumonia?

17 A. It occurred at the time that I had
18 pneumonia.

19 Q. Did it involve the fact that you had
20 pneumonia and it was very painful to breathe?

21 A. Yes.

22 Q. The sequelae of all this is that you
23 ended up, once your pneumonia cleared up, stopping
24 smoking altogether; is that correct?

25 MR. MONTGOMERY: Object to form. Move
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1 to strike.

2 THE WITNESS: That's correct.

3 BY MR. REID:

4 Q. Did you ever begin smoking again?

5 A. No.

6 MR. REID: I don't have any other
7 questions. You may inquire.

8 CROSS (Honorable Marvin U. Mounts, Jr.)

9 BY MR. MONTGOMERY:

10 Q. Out of curiosity, how many times did
11 you try to stop smoking before you actually did?

12 A. Probing my conscientious, not enough is
13 the best answer, but at least once a year on the
14 non smoke day that we had I would make the effort.

15 Q. Did you find cigarettes addictive, so
16 far as you were concerned?

17 A. Yes.

18 Q. How long did you have this pneumonia?

19 A. I think I was out of the office for a
20 month.

21 Q. During that particular month were you
22 ever hospitalized?

23 A. No.

24 Q. Were you under the care of a physician?

25 A. Yes.

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1 Q. Did the physician tell you not to
2 smoke?

3 MR. REID: Object to the form.

4 THE WITNESS: He always said, You know
5 you should not smoke, and we just agreed as
6 we never argued about that.

7 BY MR. MONTGOMERY:

8 Q. So it took you approximately how long,
9 this painful episode, before you ultimately could
10 quit smoking? In other words, have no desire for
11 cigarettes?

12 A. Well, the month that I was out. I wish
13 I could say it was self-discipline and that, or
14 courage or will. And it wasn't out of courage or
15 will.

16 Q. Did you completely lose your desire to
17 stop smoking?

18 A. Not really.

19 Q. How long did it take you to discontinue
20 to crave cigarettes?

21 MR. REID: Object to the form.

22 BY MR. MONTGOMERY:

23 Q. Approximately.

24 A. I still fantasize about it.

25 Q. But could you tell me how long it took

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1 you before it didn't become -- or before it wasn't
2 foremost in your mind, so to speak?

3 A. I think following the recovery from the
4 pneumonia I was okay, and I didn't have the shakes
5 or -- I didn't have any cold chills.

6 Q. Like you did previously?

7 A. No.

8 Q. But you had those when you tried
9 previously?

10 A. Yeah. I felt very guilty about my
11 weakness and my inability to stop.

12 Q. And when you were at this juvenile
13 shelter when you saw these 12-, 13-, 14-year-olds --

14 A. Majority were 15 to 17.

15 Q. And of that population, how many would
16 you estimate smoked?

17 A. It was commonplace and widespread and
18 not confined to certain places. They just smoked
19 wherever they were.

20 Q. And of your own knowledge, from your
21 own past experience and what you have read, knowing
22 the addictive nature of the cigarettes, these kids
23 have been hooked at that early age?

24 MR. REID: I think I'll probably object
25 to the form of that question, Bob.

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1 BY MR. MONTGOMERY:

2 Q. These kids obviously had been hooked
3 prior to that time?

4 MR. REID: Same objection.

5 THE WITNESS: I think "hooked" is an
6 imprecise term; it certainly applied to me.

7 BY MR. MONTGOMERY:

8 Q. Sure.

9 A. They were allowed to smoke, I think.

10 Q. But did they have an addiction or do
11 you know?

12 A. I do not know.

13 Q. Do you know if at any time any of these
14 children had tried to stop smoking?

15 A. I do not know.

16 Q. You said you were offended by it and
17 you took this suggestion to the then Superintendent.
18 Was that Louie Wainwright?

19 A. No. He had nothing to do with the
20 Department. It was called HRS and the Department of
21 Youth Services. He was in the adult system.

22 Q. Other than this particular time when
23 this facility was in being, is that all you did, is
24 to complain to the Superintendent?

25 A. I may have mentioned it to colleagues
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1 or to others.

2 Q. Do you have any independent
3 recollection?

4 A. No, I don't.

5 Q. So from your best recollection, the
6 offensive nature of your observation and talking to
7 someone about it ended with whoever it was that was
8 in charge showing you around; is that correct?

9 A. Right. And his answer was sort of,
10 Well, we can't prevent it. We can't stop it.

11 Q. When you talked to Mr. Wainwright --
12 what was his position?

13 A. The Secretary of the Department of
14 Corrections.

15 Q. He mentioned to you the nature of
16 keeping the prisoners under control, so to speak, by
17 not taking a privilege away from them?

18 A. A behavior modification tool. You
19 know, it's like recreation and television and having
20 a decent diet: All of those things are factors that
21 help to alleviate inmate unrest, I guess.

22 Q. Wouldn't you agree that if, in fact,
23 cigarettes were as addictive to them as they were
24 with you, that this would cause some turmoil within
25 the prison population if, in fact, that privilege

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1 was taken away?

2 MR. REID: Object to the form.

3 THE WITNESS: I do agree.

4 BY MR. MONTGOMERY:

5 Q. Is it not true, Judge Mounts, with your
6 vast experience in the penal system, that prisoners
7 become quite unruly if any of the most minor
8 privileges are taken away?

9 A. I think so.

10 Q. And they file lawsuits and they bang
11 the bars and all this other stuff; is that not
12 correct?

13 A. That's correct.

14 Q. That's customary in a prison, is it
15 not, sir?

16 A. In my opinion, yes.

17 Q. Now, you mentioned something about the
18 lobbyists in the Legislature preventing any movement
19 toward showing disfavor of cigarette smoking.

20 MR. REID: Excuse me. Let me object to
21 your terminology.

22 MR. MONTGOMERY: Form of the question?
23 Make your objection. Don't make a speaking
24 objection.

25 MR. REID: Please be quiet. Please be

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1 quiet.

2 MR. MONTGOMERY: Until the time, if I
3 go --

4 MR. REID: Objection to the form of the
5 question and use of the word -- and I'm
6 trying to be precise because it's not all
7 trash that you're saying. The terminology of
8 a lobbyist preventing, I object to that part
9 of it.

10 MR. MONTGOMERY: Read back the question
11 if you would, please, ma'am.

12 (Thereupon, the requested portion of
13 the record was read by the court reporter.)

14 BY MR. MONTGOMERY:

15 Q. In regard to discontinuing either the
16 inmates' smoking or the continuation of the
17 manufacture of tobacco, did I understand that
18 correctly?

19 MR. REID: I object to the form.

20 BY MR. MONTGOMERY:

21 Q. Go ahead, Judge.

22 A. Yes. I was not articulate in the way I
23 phrased that, but that's the idea, that's the sense
24 of it, yes.

25 Q. What was this committee called again?

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1 A. It began as the Governor's Executive
2 Review Committee for the Florida Department of
3 Corrections, and then it just later became the
4 Governor's Committee on Corrections.

5 Q. Did that arise as a result of a lawsuit
6 being filed?

7 A. No. It was, I think, before he filed
8 Costello versus Wainwright.

9 Q. And that was under the auspices of
10 former Governor Graham?

11 A. Right. Graham and Mr. Simon were
12 friends and Mr. Simon became interested in
13 Corrections.

14 Q. And this committee not only concerned
15 itself with smoking but diet and the general health
16 of prisoners?

17 A. Budget and prison resources, prison
18 industries; I mean, the whole firmament of prison
19 responsibilities.

20 Q. Cigarette smoking was what, a minor
21 portion of what you all were doing?

22 A. Minor, very minor.

23 Q. Out of curiosity, how did you become a
24 witness in this case? How did that come about?

25 MR. REID: He's --

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1 MR. MONTGOMERY: I'm not asking you.

2 I'm asking the judge here.

3 MR. REID: Obviously.

4 THE WITNESS: I'm prepared to answer.

5 BY MR. MONTGOMERY:

6 Q. Go ahead.

7 A. On the elevator -- one day Justus and I
8 were in the elevator in the courthouse and he said,
9 Marvin, I've read in some committee reports about
10 you being on a Governor's Committee on Corrections,
11 and tell me about that. I told him.

12 He followed me down to my office, and
13 we chatted for a few minutes, and that was it.

14 Q. The children, the girls that you said
15 that there were approximately 100 there, they were
16 smoking also?

17 A. I don't recall at that institution.

18 Q. Did you ever inquire of any of these
19 children why they smoked?

20 A. No, I did not.

21 Q. You mentioned that you were aware,
22 during the time that you were smoking, of the
23 diseases caused by tobacco; is that correct?

24 A. Yes.

25 Q. And that everyone knew about it as far

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1 as you knew?

2 A. In my circle.

3 Q. Sure.

4 Would it surprise you that the CEOs of
5 the cigarette manufactures don't know this?

6 MR. REID: Object to the form of the
7 question.

8 BY MR. MONTGOMERY:

9 Q. Does that surprise you, that they had
10 no knowledge of lung cancer, emphysema, blood
11 pressure?

12 MR. REID: Same objection.

13 THE WITNESS: I think all thinking
14 people are aware of the health hazards.

15 BY MR. MONTGOMERY:

16 Q. Now, just from my calculations, when
17 you observed the children population that was about
18 what, 1980, did you say?

19 A. I think in the mid '70s.

20 Q. '70s, '75 or so. So it's been over 20
21 years ago?

22 A. Uh-huh.

23 Q. You have to say yes or no.

24 A. Yes. I appreciate you telling me.

25 Q. Do you know at any time what action was

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1 taken during that 22 years or so to educate the
2 children or otherwise to prevent them from smoking?

3 A. No, I do not.

4 Q. If any?

5 A. No.

6 Q. When you were speaking or meeting in
7 this committee, do you know at any time whether or
8 not any documentation, medical documentation, was
9 discussed in regard to the health hazards of
10 smoking, medical journals, things of that nature?

11 A. Well, the Secretary mentioned reports
12 from university research, and I think he mentioned
13 doctors who were in the legislature who were
14 concerned about it. And that's the best of my
15 recollection.

16 Q. And that was as far back as --

17 A. -- in the '80s.

18 Q. '80s. Okay. And I believe you were
19 aware of, what was it, 1978 that the manufacture of
20 DC cigarettes was stopped?

21 A. Or perhaps in 1980. I'm not sure.

22 Q. Been some time ago, many years ago?

23 A. It was very close to the date of this
24 committee which was in 1980, in September.

25 Q. Are you going to be here during the

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1 month of August?

2 A. I had hoped to go to Denver.

3 Q. How about September and October and
4 November?

5 A. I'll be here in September and October
6 and November.

7 Q. Have you had any discussion with former
8 Governor Graham and now Senator, or Louie Wainwright
9 or Bob Josephsberg or any other member of this
10 committee since Mr. Reid has contacted you?

11 A. No.

12 I did, however, if you want me to
13 volunteer this?

14 MR. REID: Volunteer.

15 THE WITNESS: I had lunch yesterday
16 with a person who might be subpoenaed in this
17 litigation. His name is Jack Frost, with the
18 American Heart Association. Do you know him?

19 BY MR. MONTGOMERY:

20 Q. Yes.

21 A. And apparently he had read in the paper
22 that I was to be deposed and asked me what the
23 reason was, and I told him I thought it was this,
24 what we have -- what I have given the deposition on
25 here today.

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1 MR. MONTGOMERY: Thank you very much,
2 Judge. I have no further questions.

3 REDIRECT (Honorable Marvin U. Mounts, Jr.)

4 BY MR. REID:

5 Q. Couple of follow-ups.

6 Judge Mounts, do you recall whether or
7 not there was any unrest in the prison system when
8 the State stopped giving out their free cigarettes?

9 A. There was a disturbance at one of the
10 institutions.

11 Q. Which one, do you know?

12 A. In the center of the State. I don't
13 recall which one, but it was one that had a higher
14 incidence of what they call violence, as between
15 inmates and inmates and staff than other prisons.

16 Q. Did you ever inquire as to whether or
17 why or why not the State had no programs or policies
18 instituted in these juvenile facilities for children
19 to help them not smoke?

20 A. He asked me that and I don't think it
21 went beyond conversation with colleagues or others,
22 an occasional youth counselor or probation officer.

23 Q. The discussion that you told us about
24 concerning the lobbyist, that was a discussion that
25 you had or that someone else had?

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1 A. My recollection was that the Secretary
2 believed that the tobacco lobbyists had an interest
3 in whether or not the State discontinued --

4 Q. My question is: Did you have a
5 conversation or did Secretary Wainwright have the
6 conversation?

7 A. I learned that information from him.

8 Q. It wasn't you?

9 A. No. I didn't speak to any lobbyists
10 or --

11 Q. Okay.

12 Did you ever find out in these
13 committee meetings where you discussed budget how
14 much money the State made on the sale of these
15 cigarettes?

16 A. They didn't sell them, in my
17 understanding; they were given to the inmates. They
18 raised tobacco, among other crops, and they may have
19 sold some of the tobacco that they didn't use. They
20 did that with other crops like beans or cattle.

21 Q. Where did they raise their tobacco, in
22 north Florida I presume?

23 A. Yes. In and around I think the
24 Tallahassee area.

25 Q. Do you know if they still raise

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1 tobacco?

2 A. I don't know.

3 MR. REID: That's all I have. Thank
4 you.

5 MR. MONTGOMERY: You have a right to
6 read this. Would you like to read this?

7 THE WITNESS: No. Thank you.

8 MR. MONTGOMERY: Would you like to
9 waive the reading of this?

10 THE WITNESS: I think I will waive.

11

12 (Witness excused.)

13

14 (Thereupon, at 4:30 p.m.,
15 the deposition was concluded.)

16

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CERTIFICATE OF OATH

The State of Florida)
County of Palm Beach.)

I, the undersigned authority, certify
that Honorable Marvin U. Mounts, Jr. personally
appeared before me and was duly sworn.

WITNESS my hand and official seal this
23rd day of June, 1997.


Cynthia Hektner



CYNTHIA HEKTNER
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Area Code 561 859-4155

Suite 1515, 1 Financial Plaza
NationsBank
Ft. Lauderdale, Florida 33324
Area Code (954) 525-6722

International Place
100 S.E. 2nd Street • 23rd Floor
Miami, Florida 33131
Area Code (305) 371-2713

Suite 205
2499 Gages Road
Boca Raton, Florida 33431
Area Code 561 338-0955

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The State Of Florida)
County Of Palm Beach.)

I, Cynthia Hektner, Court Reporter, do hereby certify that I was authorized to and did report said deposition in stenotype; and that the foregoing pages, numbered from 1 to 38, inclusive, are a true and correct transcription of my shorthand notes of said deposition.

I further certify that I am not attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel or party connected with the action, nor am I financially interested in the action.

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Dated this 23rd day of June, 1997.


Cynthia Hektner



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5th Floor • Comeau Building
319 Clematis Street
West Palm Beach, Florida 33401
Area Code (561) 659-4155

Suite 1515, 1 Financial Plaza
NationsBank
Ft. Lauderdale, Florida 33394
Area Code (954) 525-6723

International Place
100 S.E. 2nd Street • 23rd Floor
Miami, Florida 33131
Area Code (305) 371-2713

Suite 205
2499 Glades Road
Boca Raton, Florida 33433
Area Code (561) 338-0955